REMARKS

The only issues outstanding in the Office Action mailed July 2, 2002, are the rejections under 35 U.S.C. §§112 and 103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Rejections Under 35 U.S.C. §112

Claims 5-10 and 12-14 have been rejected under 35 U.S.C. §112, second paragraph. Reconsideration of this rejection is respectfully requested.

Minor typographical changes have been made in the claims in order to provide antecedent basis for various terms, and to correct the dependencies of various claims. The scope of the claims have not been changed, either literally or for purposes of the doctrine of equivalents, by these amendments. Withdrawal of the rejection is, therefore, respectfully requested.

Claims 4-9 and 15 have been rejected under 35 U.S.C. §112, first paragraph. Reconsideration of this rejection is respectfully requested.

The claims have been clarified in order to be consistent with the disclosure, e.g., at pages 2 and 3 of the specification, in which it is indicated that the polymer containing polyether chains can be a polyether polyamide block copolymer, which in turn can contain polyoxyalkylene chains and polyamide chains. It is submitted that the claims are internally consistent, and withdrawal of this rejection is thus respectfully requested.

Rejection Under 35 U.S.C. §103

Claims 4-10 and 12-15 have been rejected under 35 U.S.C. §103 over Flesher or Werenicz or WO '96/15174, each taken with Pia.

It is respectfully submitted that the references, either singularly or in combination, fail to suggest presently claimed method of composting, using a particularly defined film, which meets the characteristics set forth in independent claims 4 and 15 (claim 4 parallels claim 15, but recites that the polymer containing polyether chains is a polyether polyamide block copolymer).

Flesher discloses a polyetheresteramide, and water vapor permeable films thereof. Patentees teach that these films are used in "many application[sic] and especially for

composite articles and objects provided with such film(s) and intended for contact with the human or animal body." Patentees list, in particular, manufacture of clothing, footwear, adhesive or non-adhesive dressings, or compresses and linen employed in operating units, as well as hardware supports for curative or preventative medications administered subcutaneously. Patentees further indicate that the films may be used in the manufacturing of seats such as motor vehicle seats or under roofing materials in order to increase leak proofing of the roof without retaining moisture. See column 3, lines 20-60.

Werenicz discloses a polyurethane-based film, which is water permeable, and teaches that the film may be used in "applications in which water-vapor permeability is desirable." See column 1, lines 23-26. Patentees teach that these applications include weatherproof clothing and tarpaulins, and "in the construction industry." See column 1, lines 21-24.

WO 96/15174 discloses polyethers used in biodegradable moldings, adhesives, foams and blends with starch. See the abstract.

Thus, as admitted in the office action, these references fail to suggest the use of their films in the production of covers for composting. In order to remedy this deficiency, the office action cites Pia '951. However, the films disclosed in therein have significant differences from those of the primary references. As noted previously, the film disclosed in Pia possesses holes (see, for example, the abstract and figures) and thus also clearly does not possesses the characteristics of the materials of the primary references, or the present claims. However, it is argued in the office action that it would be obvious to employ the films of the primary references, which are gas permeable, in order to replace the non-gas permeable hole-containing film of Pia. Applicants respectfully disagree with this analysis. Even though Pia arguably teaches that the carbon dioxide in oxygen rates can be controlled through use of their film, what Pia actually teaches is that such control can be performed by the selection of size and location of the holes or vents in the film. See column 2, lines 21-34.

Thus, there is absolutely no suggestion in the references, whether singly or in combination, to transfer the permeable films of the primary references to the quite different use of the non-gas permeable but hole-ridden film of the secondary reference, in the absence of impermissible hindsight. This is even more so the case for the polyether block

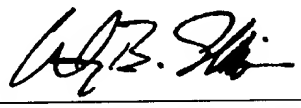
polyamide of claims 4-14.

Even assuming, as argued at page 4 of the Office Action, that Pia discloses that the covers over compost can be tailored or modified to control oxygen, carbon dioxide or water content or exchange rate, patentees teach that this can be done by "venting" through holes in the cover. However, it simply is not seen that there is any motivation to make the leap of logic, as done on page 4 of the Office Action, that gas permeable films would be usable to replace the perforated films of Pia, much less any teaching that the particular gas permeable films of the other references would be desirable in the composting application of the Pia patent. At best, it might arguably be "obvious to try" gas permeable films to see whether an acceptable level transmission of oxygen and elimination of carbon dioxide in accordance with the Pia patent could be attained, but even if one of ordinary skill in the art were directed to these films (which one of ordinary skill in the art is not, based on the present record), there is not even a reasonable expectation of success but rather a mere invitation to experiment. Such "obvious to try" falls far short of the motivation required by the Federal Circuit in order to support a case of obviousness. See, *Merck and Co., Inc. v. Biocraft Laboratories, Inc.*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir. 1989). The Office Action seems to assume that gas permeable films are but another form of perforated films as in Pia, but this is far from the case. For example, as discussed in the background section of Werenicz et al. '887, it is difficult to optimize water-vapor permeability, versus water permeability, and thus hygro-stability. See column 3, lines 20-30. Flesher '024 teaches the difficulty in balancing permeability to water vapor and other gases, versus permeability to water in a non-porous film. See column 1, lines 33-35 and column 2, lines 48-53. Pia itself teaches that it is necessary to control not only oxygen permeability, but carbon dioxide permeability as well. Further, patentees teach that it is necessary to minimize moisture loss. Thus, in view of the obvious complexity of gas-permeable films, and the different focus of the Pia patent (carbon dioxide and oxygen permeability, and moisture retention) versus the focus of the other patents disclosing gas permeable films (water vapor permeability, with moisture inpermeability) it simply would not have been obvious to one of ordinary skill in the art to extract the films of these other references for use in the composting application of Pia, in the absence of any reasonable expectation of success or any motivation suggesting that the gas permeable films would achieve the

necessary goals of Pia. Accordingly, it is submitted that the rejection under 35 U.S.C. §103 should be withdrawn, and the same is respectfully requested.

The claims of the application are again submitted to be in condition for allowance. However, if the Examiner hase any questions or comments, he is cordially invited to telephone the undersigned at the number indicated below.

Respectfully submitted,



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Filed: December 2, 2002

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Please amend claims 5-9 and 12 as follows:

5. (Amended) A method according to claim ~~4~~ 15, wherein the polymer containing polyether chains is a polyoxyalkylene block copolymer.

6. (Amended) A method according to claim 4, wherein the ~~polymer containing polyether chains~~ polyether polyamide block copolymer is a polymer in which polyoxyalkylene chains are linked.

7. (Amended) A method according to claim 4, wherein the ~~polymer containing polyether chains is a polyoxyalkylene~~ polyether polyamide block copolymer contains polyoxyethylene, poly(1,2- or 1,3-oxypropylene), polyoxytetramethylene, polyoxyhexamethylene, a block or random copolymer of ethylene oxide and propylene oxide, or a block or random copolymer of ethylene oxide and tetra-hydrofuran.

8. (Amended) A method according to claim 4, wherein the ~~polymer containing polyether chains is~~ polyether polyamide block copolymer contains a polyoxyalkylene copolymer with 2 to 4 carbon atoms in the alkylene moiety.

9. (Amended) A method according to claim 4, wherein the ~~polymer containing polyether chains~~ polyether polyamide block copolymer is a polyoxyalkylene of number average molecular weight 200 to 6000.

12. (Amended) A method according to claim ~~11~~ 4, wherein the ~~copolymer~~ polyether polyamide block copolymer contains (a) polyoxyalkylene chains linked with (b) polyamide chains which are (i) polymers of aminocarboxylic acids or lactams having at least 6 carbon atoms, or (ii) polymer of dicarboxylic acid salts and diamines with at least 6 carbon atoms.